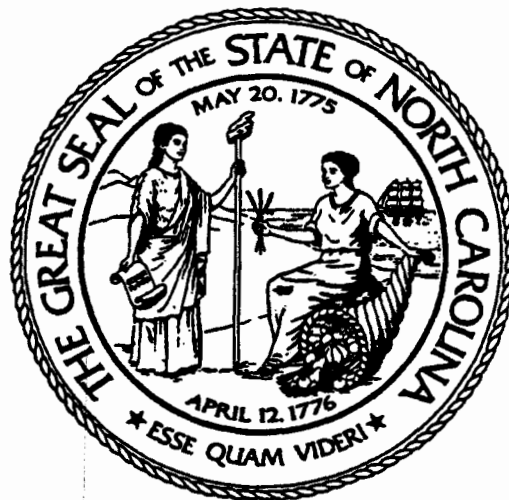


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1994

**LEGISLATIVE
RESEARCH COMMISSION**

TOBACCO WAREHOUSE COMMITTEE



**REPORT TO THE
1993 GENERAL ASSEMBLY
OF NORTH CAROLINA**

1994 SESSION

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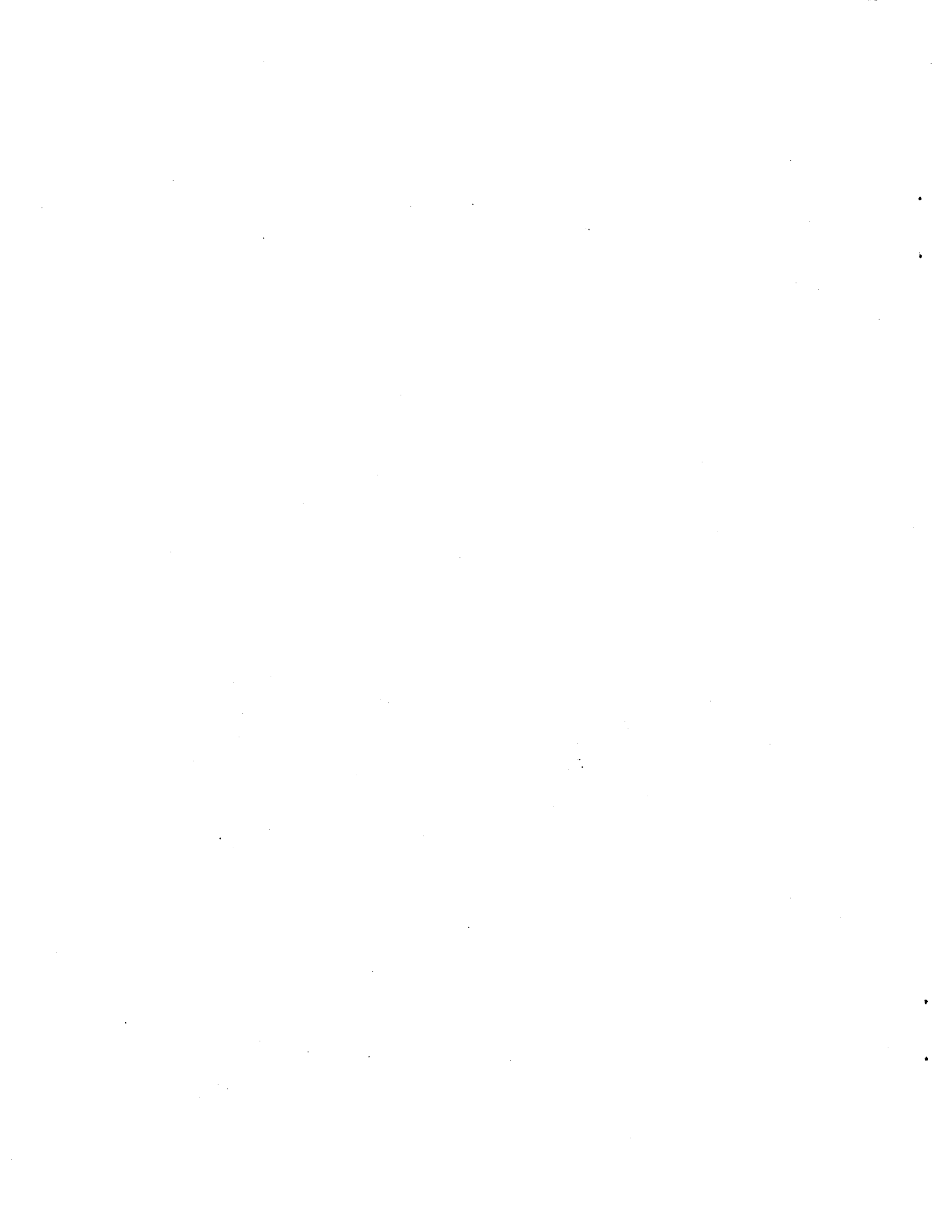
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COMMITTEE.

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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

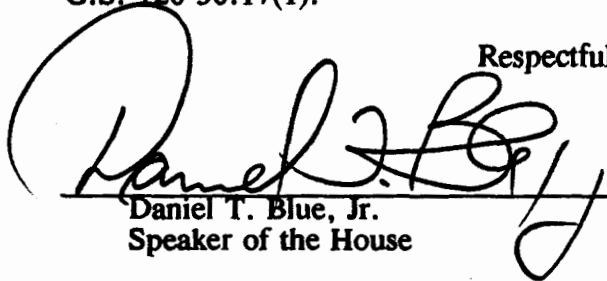


May 23, 1994

TO THE MEMBERS OF THE 1993 GENERAL ASSEMBLY (REGULAR SESSION 1994):

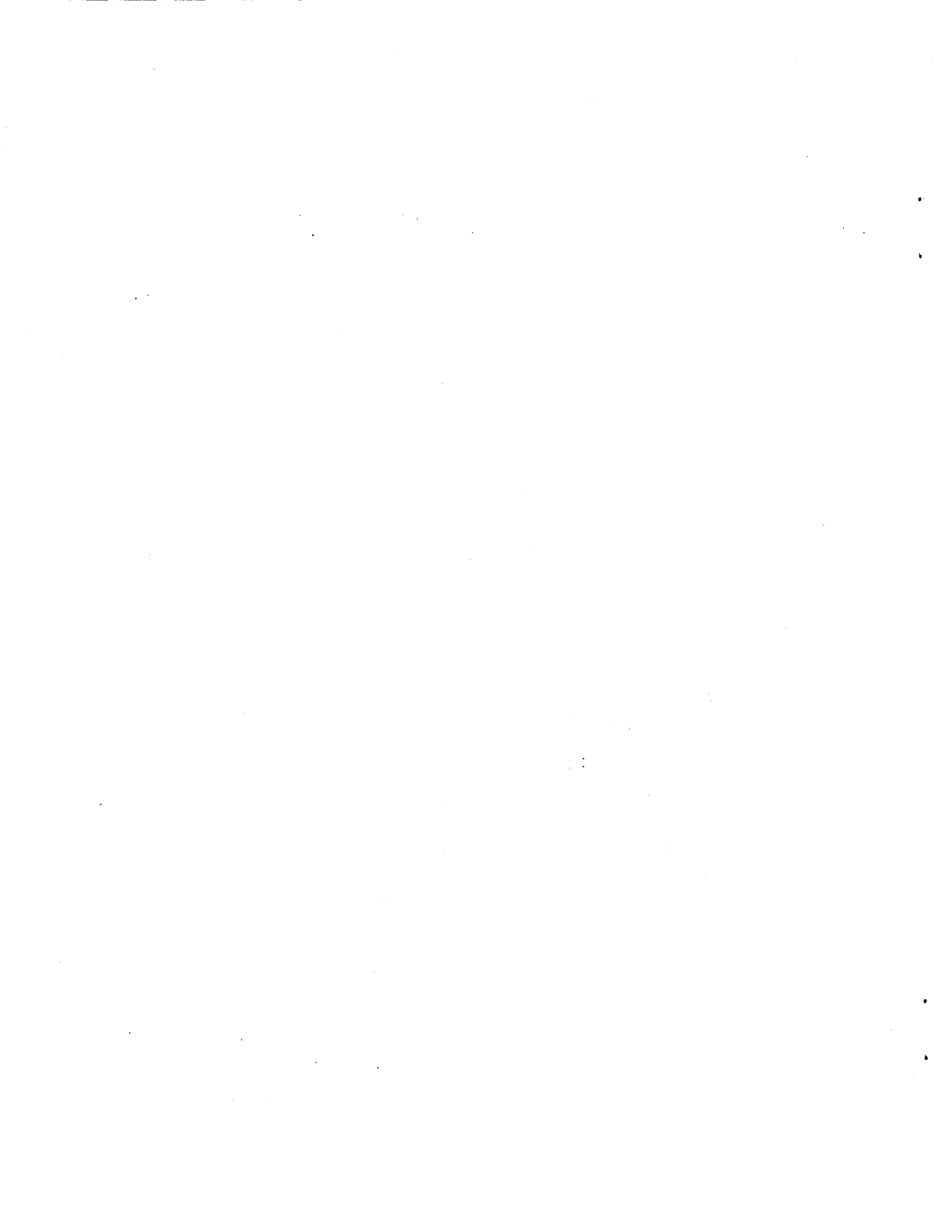
The Legislative Research Commission herewith submits to you for your consideration its final report on tobacco warehouse fees. The report was prepared by the Legislative Research Commission's Tobacco Warehouse Committee pursuant to G.S. 120-30.17(1).

Respectfully submitted,


Daniel T. Blue, Jr.
Speaker of the House


Marc Basnight
President Pro Tempore

Cochair
Legislative Research Commission



1993-1994

LEGISLATIVE RESEARCH COMMISSION

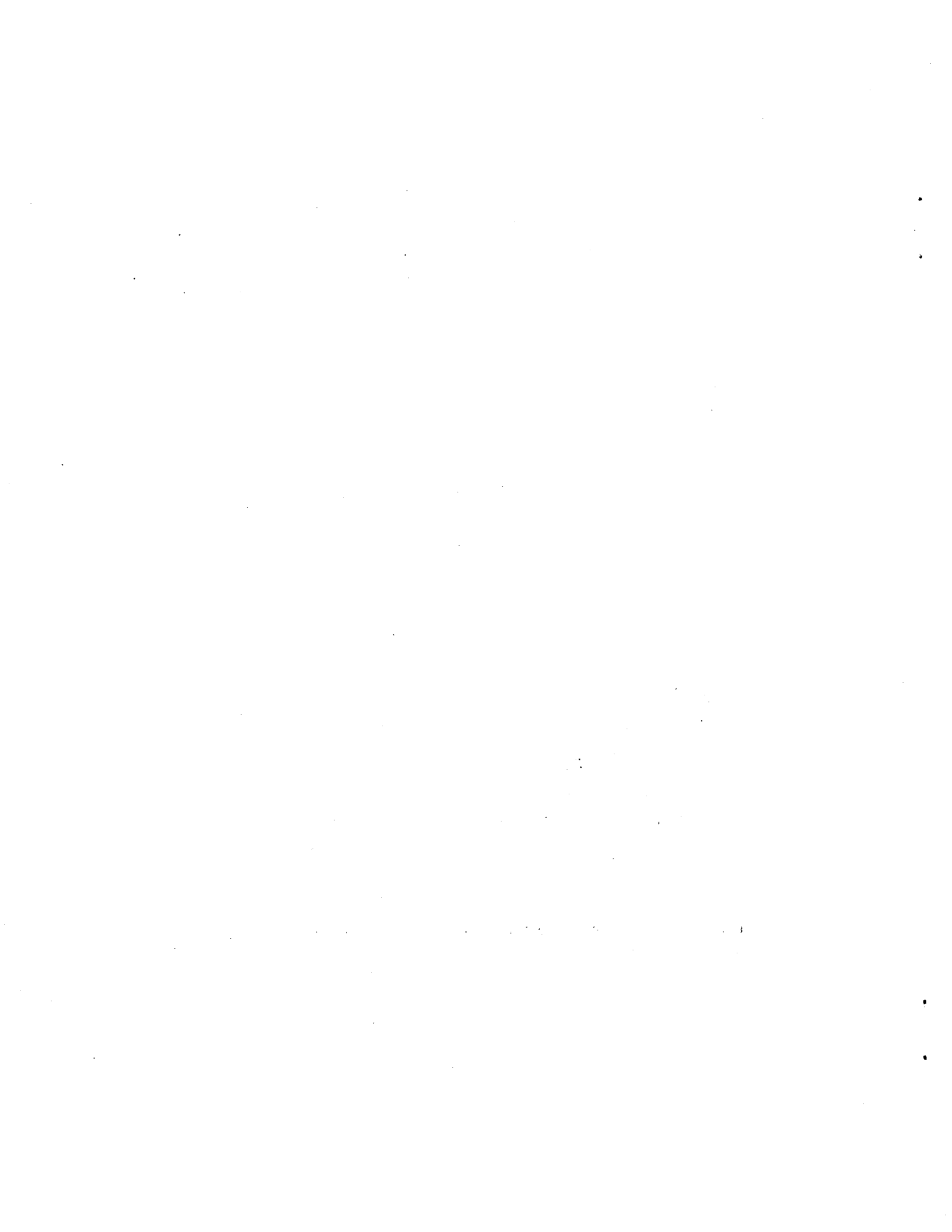
MEMBERSHIP

**President Pro Tempore of
the Senate
Marc Basnight, Cochair**

**Senator Austin Allran
Senator Frank W. Ballance, Jr.
Senator R. L. Martin
Senator J. K. Sherron, Jr.
Senator Lura S. Tally**

**Speaker of the House of
Representatives
Daniel T. Blue, Jr., Cochair**

**Rep. Harold J. Brubaker
Rep. Marie W. Colton
Rep. W. Pete Cunningham
Rep. Bertha M. Holt
Rep. Vernon G. James**



PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1993 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of tobacco warehouse charges would have been authorized by Part II, Section 2.1 (35) of House Bill 1319 (2nd edition) which passed both chambers but inadvertently was among the bills not ratified at the end of the 1993 Session. Part II of House Bill 1319 would allow studies authorized by that Part for the Legislative Research Commission to consider House Bill 889 in determining the nature, scope and aspects of the study. The relevant portions of House Bill 1319 and House Bill 889 are included in Appendix A. The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Regulation

Grouping area under the direction of Representative Harold J. Brubaker. The Committee was chaired by Senator Charles W. Albertson and Representative Edward C. Bowen. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

Background

Since 1895 the amount that a tobacco warehouse operator could charge for his services has been set by statute. G.S. 106-452 provides that the charges for selling tobacco shall not exceed the following: \$.15 per pile under 100 lbs. and \$.25 per pile over 100 lbs. for auction fees; \$.10 per pile per 100 lbs. for weighing and handling; and commission of 2.5% of the gross sales price of the tobacco. Violation of the provisions of G.S. 106-452 is a Class 3 misdemeanor. G.S. 106-454. The allowable charges for services rendered by the tobacco warehouse have not changed since 1895.

Over time, the statutory scheme appeared to work well and the tobacco warehouse operator was adequately compensated for his services. The increases in the amounts of tobacco sold and the increases in price/lb. covered expenses and provided adequate profit. However, since the 1980's, the tobacco market has experienced considerable change, including a significant decrease in quota and a decline in prices. In addition, the tobacco warehouse operator has expanded the range of services provided to both growers and buyers. The statutes do not provide for reimbursement from growers for these services and are silent on whether charges may be imposed upon buyers.

Current conditions in the tobacco market combined with the statutory limitation on warehouse charges have created serious financial problems for tobacco warehouse operators. Many have gone out of business. Some have converted their warehouse facilities to more profitable enterprises. In many the physical plant has deteriorated and the warehouse operations do not generate adequate revenues to warrant investing in improvements.

Among the growers, tobacco warehouse operators, and the buying companies there is a consensus that tobacco warehouse operators need additional revenue to continue as viable enterprises. There also appears to be a consensus that the tobacco auction system should be retained. However, difficulties arise in determining who should bear the burden of the increased charges and how the increases should be assessed. The

Legislative Research Commission's Tobacco Warehouse Committee was established to try to resolve these questions.

Meetings

The Tobacco Warehouse Committee met on February 1, 1994 to discuss the financial status and needs of tobacco warehouse operators and again on May 4, 1994 to discuss the recommendations of the committee.

At the February 1, 1994 meeting, representatives of the tobacco growers, tobacco warehouse operators, and the tobacco companies were invited to speak. Present at the meeting were the following:

Spencer Edmonson	Bright Belt Warehouse Association
Carl Sofley	N.C. Department of Agriculture
W.B. Jenkins	N.C. Farm Bureau Federation
John Cyrus	N.C. State Grange
Charles A. Harvey	Tobacco Growers Association of N.C.
G.A. Harris	Flue-cured Tobacco Cooperative Stabilization Corporation
Roger Bone	The Tobacco Institute and member companies
J.T. Bunn	Leaf Tobacco Exporters Association and Tobacco Association of the United States.

Mr. Edmonson spoke about the extra costs borne by the tobacco warehouse operators for which there should be reimbursement. These included the cost of tobacco sheets, interest on payments made to the growers, collection of fees and assessments, and the storage of tobacco after the sale. Carl Sofley, Tobacco Marketing Specialist for the N.C. Department of Agriculture, presented several tables showing the changes in prices for tobacco. He stated that the Department's position was that additional monies needed by the warehouse operators should come from the buying companies. John Cyrus, N.C. State Grange, presented information on the experience of the Kentucky and Tennessee burley markets where warehouse charges are unregulated.

W.B. Jenkins spoke on behalf of the N.C. Farm Bureau Federation, Inc. The Farm Bureau took the position that the farmers are paying for the services received. They are opposed to increases in charges to the grower. Mr. Jenkins suggested a close look be taken at the services provided by the warehouses and the trend in tobacco quotas and prices and cigarette prices. Services provided should be paid for by the beneficiary. Charles Harvey, The Tobacco Growers Association of N.C., spoke of the need to have a viable auction system. He suggested that Dr. Paxton Marshall of Virginia Polytech, who has completed an extensive study of the tobacco marketing system, be invited to address the Committee. He noted that increasing warehouse charges would add to the growers costs, and would only be a "bandaid approach" to the problems in the tobacco marketing system.

Roger Bone, representing the Tobacco Institute, suggested that the statutes be clarified such that the warehouse operator would be free to charge the buyer for services provided. In particular he suggested that buyers be charged for delayed payments for tobacco purchases and for the storage on the warehouse floor of sold tobacco. He also noted that the issues raised were ones that should be addressed by the industry and not regulated by the legislature.

Finally, Mr. Bunn spoke on behalf of the Leaf Tobacco Exporters Association and the Tobacco Association of the United States. Mr. Bunn stated that additional charges to buyers would make U.S tobacco less competitive. He suggested that tobacco marketing charges be deregulated.

At the May 4, 1994 meeting, the committee discussed the proposal that the statutes governing tobacco warehouse charges be repealed. The committee voted (for/against) deregulation. The proposed legislation repealing the statutes may be found on page 6 of this report.

FINDINGS AND RECOMMENDATIONS

Based on the presentations of the many different interest groups and the financial needs of the tobacco warehouse operators, the Committee recommends that the General Assembly repeal the statutes limiting the amounts that tobacco warehouse operators may charge for their services and allowing the markets to determine the level of charges.

The Committee endorses the passage of **LEGISLATIVE PROPOSAL I : AN ACT TO REPEAL THE STATUTES LIMITING TOBACCO WAREHOUSE CHARGES.**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

s/h

D

93-TWF-01
THIS IS A DRAFT 3-MAY-94 15:39:00

Short Title: Repeal Tobacco Warehouse Charges.

(Public)

Sponsors:

Referred to:

- 1 A BILL TO BE ENTITLED
2 AN ACT TO REPEAL THE STATUTES LIMITING TOBACCO
3 WAREHOUSE CHARGES
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 106-452 is repealed.
6 Sec. 2. G.S. 106-454 is repealed.
7 Sec. 3. This act becomes effective January 1, 1995.
8

EXPLANATION OF LEGISLATIVE PROPOSAL I

Legislative Proposal repeals the statutes governing the amount that tobacco warehouse operators may charge for their services. The effect of the repeal is to allow market forces to set the charges for services provided by tobacco warehouse operators.

Section 1 repeals the statute that sets forth the limitations on tobacco warehouse commissions. G.S. 106-452 provides:

§ 106-452. Maximum warehouse charges. The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses shall not exceed the following schedule of prices, viz: for auction fees, fifteen cents (15¢) on all piles of 100 pounds or less, and twenty-five cents (25¢) on all piles over 100 pounds; for weighing and handling, ten cents (10¢) per pile for all piles less than 100 pounds, for all piles over 100 pounds at the rate of ten cents (10¢) per hundred pounds; for commissions on the gross sales of leaf tobacco in said warehouses, not to exceed two and one-half per centum (2 1/2%); Provided that tobacco warehouses selling burley tobacco only may charge commissions on the gross sales of burley leaf tobacco not to exceed three and one-half per centum (3 1/2%). There may also be a basket fee of twenty-five cents (25¢) per basket on all burley leaf tobacco sold in such warehouses. (1895, c. 81; Rev., s. 3042; C.S., s. 5124; 1941, c. 291; 1955, c. 1029.)

Section 2 repeals G.S. 106-454 which provides for criminal penalties for those persons found charging in excess of the statutory limitations in G.S. 106-452 for tobacco warehouse services. G.S. 106-454 provides:

§ 106-454. (Effective January 1, 1995) Warehouse proprietor, etc., to render bill of charges; penalty.

The owner, operator, or person in charge of each warehouse shall render to each seller of tobacco at the warehouse a bill plainly stating the amount charged for weighing and handling, the amount charged for auction fees, and the commission charged on such sale, and it shall be unlawful for any other charge or fees to be made or accepted. Any person, firm, corporation, or any employee thereof, violating the provisions of this section shall be guilty of a Class 3 misdemeanor for the first offense, and for the second or additional offenses a Class 2 misdemeanor. (1895, c. 81, ss. 3, 4; Rev., s. 3044; C.S., s. 5126; 1973, c. 1305; 1993, c. 539, s. 787.)

The effective date of the bill is January 1, 1995. The effective date is delayed to minimize the impact of the changes on the 1994 tobacco market.

APPENDIX A

HOUSE BILL 1319, 2ND EDITION

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1993".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1993 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

(35) Tobacco Warehouse (H.B. 889 - Bowen),

Sec. 2.2. Committee Membership. For each Legislative Research Commission Committee created during the 1993-94 biennium, the cochairs of the Commission shall appoint the Committee membership.

Sec. 2.3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1994 Regular Session of the 1993 General Assembly or the 1995 General Assembly, or both.

Sec. 2.4. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.5. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

PART XI.-----APPROPRIATION FOR STUDIES

Sec. 11.1. From the appropriations to the General Assembly for studies, the Legislative Services Commission may allocate funds to conduct the studies authorized by this act.

PART XII.-----EFFECTIVE DATE

Sec. 12.1. This act is effective upon ratification. Part VI of this act is repealed on June 30, 1995.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE BILL 889

Short Title: New Tobacco Warehouse Fee.

(Public)

Sponsors: Representatives Bowen; and Fitch.

Referred to: Finance.

April 12, 1993

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE TOBACCO WAREHOUSES TO CHARGE A FEE TO
3 THE BUYERS OF LEAF TOBACCO.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 106-452 reads as rewritten:
6 "**§ 106-452. Maximum warehouse charges.**
7 The charges and expenses to the seller of handling and selling leaf tobacco upon
8 the floor of tobacco warehouses shall not exceed the following schedule of prices, viz:
9 for auction fees, fifteen cents (15¢) on all piles of 100 pounds or less, and twenty-five
10 cents (25¢) on all piles over 100 pounds; for weighing and handling, ten cents (10¢)
11 per pile for all piles less than 100 pounds, for all piles over 100 pounds at the rate of
12 ten cents (10¢) per hundred pounds; for commissions on the gross sales of leaf
13 tobacco in said warehouses, not to exceed two and one-half per centum (2 1/2%):
14 Provided that tobacco warehouses selling burley tobacco only may charge
15 commissions on to the seller the gross sales of burley leaf tobacco not to exceed three
16 and one-half per centum (3 1/2%). There may also be a basket fee of twenty-five
17 cents (25¢) per basket on all burley leaf tobacco sold in such warehouses.
18 The charges to the buyer for sales fees on the gross purchases of leaf tobacco in a
19 warehouse shall not exceed one per centum (1%)."
20 Sec. 2. G.S. 106-454 reads as rewritten:
21 "**§ 106-454. Warehouse proprietor, etc., to render bill of charges; penalty.**
22 The owner, operator, or person in charge of each warehouse shall render to each
23 seller of tobacco at the warehouse a bill plainly stating the amount charged to the
24 seller for weighing and handling, the amount charged to the seller for auction fees,

1 and the commission charged to the seller on such sale, and it shall be unlawful for
2 any other charge or fees to the seller to be made or accepted. The owner, operator,
3 or person in charge of each warehouse shall render to each buyer of tobacco at the
4 warehouse a bill plainly stating the sales fees charged to the buyer on such sale, and
5 it shall be unlawful for any other charge or fees to the buyer to be made or accepted.
6 Any person, firm, corporation, or any employee thereof, violating the provisions of
7 this section shall be guilty of a misdemeanor and fined not less than one hundred
8 dollars (\$100.00) nor more than two hundred and fifty dollars (\$250.00) and/or
9 imprisoned not to exceed 30 days for the first offense, and for the second or
10 additional offenses fined not less than five hundred dollars (\$500.00) nor more than
11 one thousand dollars (\$1,000) or imprisoned for not less than 30 days or more than
12 six months, or both fined and imprisoned, in the discretion of the court."
13 Sec. 3. This act becomes effective July 1, 1993.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1993

H

2

HOUSE BILL 889
Committee Substitute Favorable 6/1/93

Short Title: Study on Tobacco Warehouse Fees.

(Public)

Sponsors:

Referred to:

April 12, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE TOBACCO WAREHOUSE STUDY
3 COMMISSION.

4 The General Assembly of North Carolina enacts:

5 Section 1. The Tobacco Warehouse Study Commission is created. The
6 Commission shall study the regulation of fees imposed by tobacco warehouses. In
7 making the study, the Commission shall consider whether the State-imposed limits set
8 in G.S. 106-452 on the amount a tobacco warehouse can charge for its services should
9 be repealed or modified and whether the amounts charged on burley tobacco should
10 be different from the amounts charged on flue-cured tobacco.

11 Sec. 2. The Commission shall consist of 12 members to be appointed as
12 follows:

- 13 (1) Two members appointed by the President Pro Tempore of the
14 Senate. One appointee shall be a member of the Senate and one
15 shall be an officer or employee of a tobacco company.
16 (2) Three members appointed by the Speaker of the House of
17 Representatives. One appointee shall be a member of the House
18 of Representatives and two shall be officers or employees of a
19 tobacco company.
20 (3) The Commissioner of the North Carolina Department of
21 Agriculture or a person designated by the Commissioner.
22 (4) The President of the North Carolina Farm Bureau Federation, Inc.,
23 or a staff member of the Federation designated by the President.

1 (5) The Master of the North Carolina State Grange or a person
2 designated by the Master.

3 (6) A tobacco grower appointed by the governing board of the
4 Tobacco Growers Association of North Carolina, Inc.

5 (7) Two owners or operators of tobacco warehouses appointed by the
6 governing board of the Bright Belt Warehouse Association.

7 (8) A leaf tobacco dealer appointed by the governing board of the
8 Tobacco Association of the United States.

9 Sec. 3. Members appointed to the Commission shall serve until the
10 Commission makes its final report. Vacancies on the Commission shall be filled in
11 the same manner as the original appointments were made.

12 Sec. 4. Upon request of the Commission or its staff, all State departments
13 and agencies shall furnish to the Commission or its staff any information that is in
14 their possession or available to them and is needed by the Commission in conducting
15 its study.

16 Sec. 5. The Commission may submit to the General Assembly an interim
17 report, a final report, or both. A report shall contain the findings of the Commission,
18 its recommendations, and any proposed legislation needed to implement the
19 recommendations. If the Commission makes a report to the 1994 Session of the
20 General Assembly, it shall submit the report on or before the first day of the 1994
21 Regular Session of the 1993 General Assembly. If the Commission does not submit a
22 report to that session, it shall submit a final report to the General Assembly on or
23 before January 16, 1995. A report shall be submitted to the General Assembly by
24 filing the report with the Speaker of the House of Representatives and the President
25 Pro Tempore of the Senate. The Commission shall terminate upon filing its final
26 report.

27 Sec. 6. The Commission shall meet upon the call of the cochairs. The
28 two members of the Commission who are members of the General Assembly shall
29 serve as cochairs.

30 Sec. 7. Upon approval of the Legislative Services Commission, the
31 Legislative Administrative Officer shall assign professional and clerical staff to assist
32 in the work of the Commission. Clerical staff shall be furnished to the Commission
33 through the Offices of the House and Senate Supervisors of Clerks. The expenses of
34 employment of the clerical staff shall be borne by the Commission. The Commission
35 may meet in the Legislative Building or the Legislative Office Building upon the
36 approval of the Legislative Services Commission.

37 Sec. 8. Members of the Commission shall be paid per diem, subsistence,
38 and travel allowances as follows:

39 (1) Commission members who are also members of the General
40 Assembly, at the rate established in G.S. 120-3.1.

41 (2) Commission members who are officers or employees of the State,
42 at the rate established in G.S. 138-6.

43 (3) All other Commission members, at the rate established in G.S.
44 138-5.

1 Sec. 9. There is allocated from the amount appropriated to the General
2 Assembly for conducting studies the sum of fifteen thousand dollars (\$15,000) for the
3 1993-94 fiscal year and the sum of fifteen thousand dollars (\$15,000) for the 1994-95
4 fiscal year to implement this act.

5 Sec. 10. This act becomes effective July 1, 1993.

APPENDIX B

TOBACCO WAREHOUSE COMMITTEE MEMBERSHIP 1993 - 1994

LRC MEMBER: Rep. Harold J. Brubaker
138 Scarboro Street
Asheboro, NC 27203
(919)629-5128

President Pro Tempore Appointments

Sen. Charles W. Albertson, CoChair
136 Henry Dunn Pickett Road
Beulaville, NC 28518
(910)298-4223

Sen. Luther Jordan
P.O. Box 701
Wilmington, NC 28402
(910)763-2441

Sen. David R. Parnell
P.O. Box 100
Parkton, NC 28371
(910)858-3521

Sen. Elaine F. Marshall
P.O. Box 1660
Lillington, NC 27546
(910)893-4000

Sen. R.C. Soles, Jr.
P.O. Box 6
Tabor City, NC 28463
(910)653-2015

Mr. Jeff Turner
P.O. Box 246
Pink Hill, NC 28572

Mr. Billy Yeargin
N.C. Sweet Potato Commission
4008-201A Barrett Drive
Raleigh, NC 27609

Speaker's Appointments

Rep. Edward C. Bowen, CoChair
Rt. 1, Box 289
Harrells, NC 28444
(910)532-4183

Rep. Arlie F. Culp
8521 U.S. Hwy. 64 E.
Ramseur, NC 27316
(910)824-2218

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1708 Maryland Street
Lumberton, NC 28358
(910)739-6800

Rep. Leo Daughtry
P.O. Drawer 1960
Smithfield, NC 27577
(919)934-5013

Rep. Dewey L. Hill
1924 S. Madison Street
Whiteville, NC 28472
(910)642-6044

Rep. Charles L. McLawhorn
Rt. 1, Box 222
Winterville, NC 28590
(919)756-2017

Rep. John M. Nichols
P.O. Box 15268
New Bern, NC 28561
(919)638-6811

Rep. Gene Rogers
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